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ಕರ್ನಾಟಕ ರಾಜ್ಯ ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾಲಯ
ಮಾನಸಗಂಗೋತ್ರಿ, ಮೈಸೂರು. ೫೭೦ ೦೦೬

KARNATAKA STATE OPEN UNIVERSITY
Manasagangotri, Mysore - 570 006

M.A. (FINAL)

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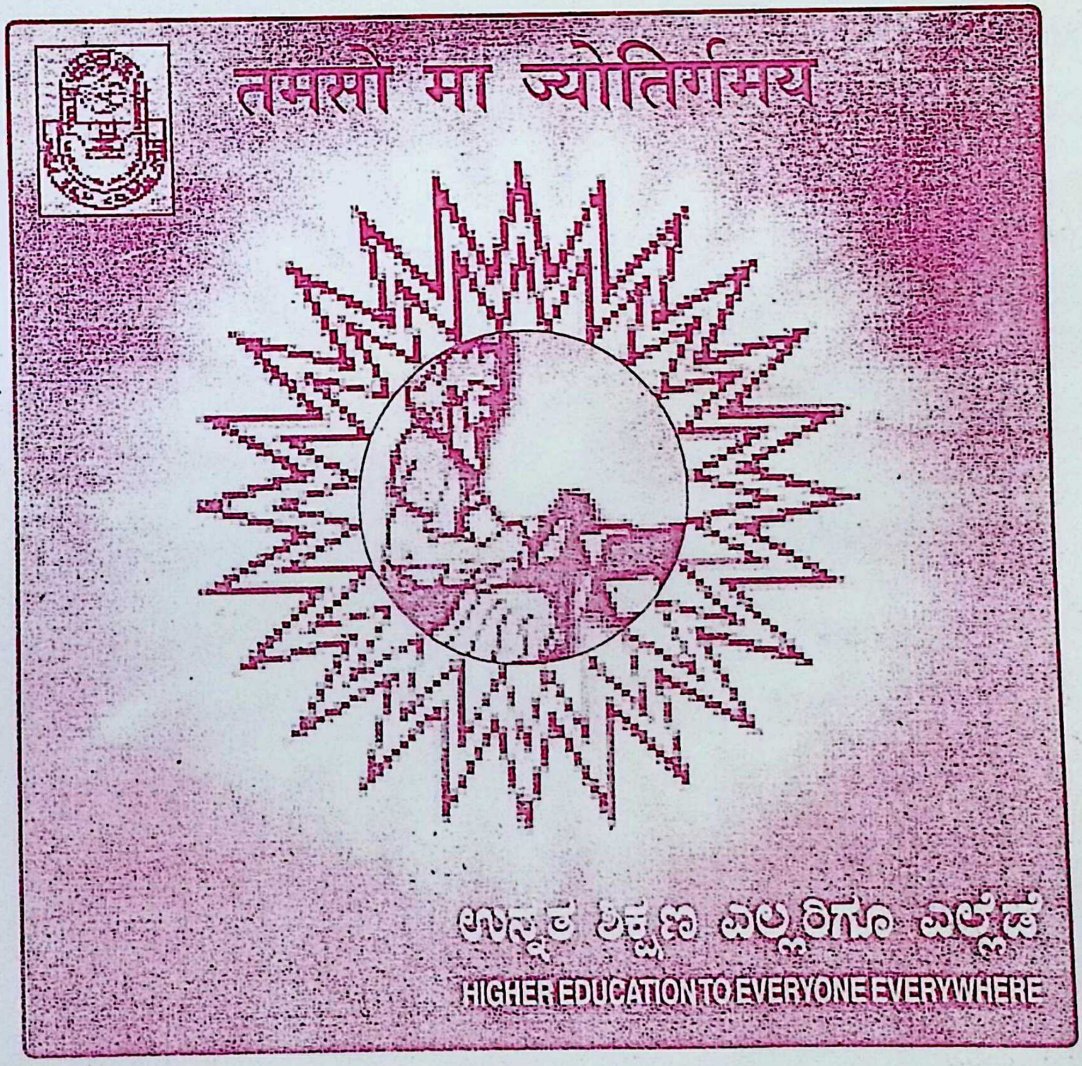
YĀJÑAVALKYASMṚTIḤ - 2



COURSE - 7 **BLOCK - 11**

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ಉನ್ನತ ಶಿಕ್ಷಣಕ್ಕಾಗಿ ಇರುವ ಅವಕಾಶಗಳನ್ನು ಹೆಚ್ಚಿಸುವುದಕ್ಕೆ ಮತ್ತು ಶಿಕ್ಷಣವನ್ನು ಪ್ರಜಾತಂತ್ರೀಕರಿಸುವುದಕ್ಕೆ ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯ ವ್ಯವಸ್ಥೆಯನ್ನು ಆರಂಭಿಸಲಾಗಿದೆ.

ರಾಷ್ಟ್ರೀಯ ಶಿಕ್ಷಣ ನೀತಿ 1986

The Open University system has been initiated in order to augment opportunities for higher education and as instrument of democrating education.

National Education Policy 1986

ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯವು ದೂರಶಿಕ್ಷಣ ಪದ್ಧತಿಯಲ್ಲಿ ಬಹುಮಾಧ್ಯಮಗಳನ್ನು ಉಪಯೋಗಿಸುತ್ತದೆ. ....ವಿದ್ಯಾಕಾಂಕ್ಷಿಗಳನ್ನು ಜ್ಞಾನ ಸಂಪಾದನೆಗಾಗಿ ಕಲಿಕಾ ಕೇಂದ್ರಕ್ಕೆ ಕೊಂಡೊಯ್ಯುವ ಬದಲು, ಜ್ಞಾನ ಸಂಪತ್ತನ್ನು ವಿದ್ಯೆ ಕಲಿಯುವವರ ಬಳಿ ಕೊಂಡೊಯ್ಯುವ ವಾಹಕವಾಗಿದೆ.

ಡಾ. ಕುಳಂದೈಸ್ವಾಮಿ

"The Open University system makes use of Multimedia in distance education system. .... it is vehicle which transports knowledge to the place of learners rather than transport to the place of learning.

Dr. Kulandai Swamy

ವಿಶ್ವಮಾನವ ಸಂದೇಶ

ಪ್ರತಿಯೊಂದು ಮಗುವು ಹುಟ್ಟುತ್ತಲೇ - ವಿಶ್ವಮಾನವ. ಬೆಳೆಯುತ್ತಾ ನಾವು ಅದನ್ನು 'ಅಲ್ಪ ಮಾನವ'ನನ್ನಾಗಿ ಮಾಡುತ್ತೇವೆ. ಮತ್ತೆ ಅದನ್ನು 'ವಿಶ್ವಮಾನವ'ನನ್ನಾಗಿ ಮಾಡುವುದೇ ವಿದ್ಯೆಯ ಕರ್ತವ್ಯವಾಗಬೇಕು.

ಮನುಜ ಮತ, ವಿಶ್ವ ಪಥ, ಸರ್ವೋದಯ, ಸಮನ್ವಯ, ಪೂರ್ಣದೃಷ್ಟಿ ಈ ಪಂಚಮಂತ್ರ ಇನ್ನು ಮುಂದಿನ ದೃಷ್ಟಿಯಾಗಬೇಕಾಗಿದೆ. ಅಂದರೆ, ನಮಗೆ ಇನ್ನು ಬೇಕಾದುದು ಆ ಮತ ಈ ಮತ ಅಲ್ಲ; ಮನುಜ ಮತ. ಆ ಪಥ ಈ ಪಥ ಅಲ್ಲ; ವಿಶ್ವ ಪಥ. ಆ ಒಬ್ಬರ ಉದಯ ಮಾತ್ರವಲ್ಲ; ಸರ್ವರ ಸರ್ವಸ್ತರದ ಉದಯ. ಪರಸ್ಪರ ವಿಮುಖವಾಗಿ ಸಿಡಿದು ಹೋಗುವುದಲ್ಲ; ಸಮನ್ವಯಗೊಳ್ಳುವುದು. ಸಂಕುಚಿತ ಮತದ ಆಂಶಿಕ ದೃಷ್ಟಿ ಅಲ್ಲ; ಭೌತಿಕ ಪಾರಮಾರ್ಥಿಕ ಎಂಬ ಭಿನ್ನದೃಷ್ಟಿ ಅಲ್ಲ; ಎಲ್ಲವನ್ನು ಭಗವದ್ ದೃಷ್ಟಿಯಿಂದ ಕಾಣುವ ಪೂರ್ಣದೃಷ್ಟಿ.

ಕುವೆಂಪು

Gospel of Universal Man

Every Child, at birth, is the universal man. But, as it grows, we turn it into "a petty man". It should be the function of education to turn it again into the enlightened "universal man".

The Religion of Humanity, the Universal Path, the Welfare of All, Reconciliation, the Integral Vision- these *five mantras* should become View of the Future. In other words, what we want henceforth is not this religion or that religion, but the Religion of Humanity ; not this path or that path, but the Universal Path ; not the well-being of this individual or that individual, but the Welfare of All ; not turning away and breaking off from one another, but reconciling and uniting in concord and harmony ; and, above all, not the partial view of a narrow creed, not the dual outlook of the material and the spiritual, but the Integral Vision of seeing all things with the eye of the Divine.

Kuvempu

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ಮಾನಸಗಂಗೋತ್ರಿ, ಮೈಸೂರು-೫೭೦ ೦೦೬

याज्ञवल्क्यस्मृतिः

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प्रस्तावना

प्रियाः संस्कृतविद्यार्थिनः

अस्मदीयकर्णाटकराज्यमुक्तविश्वविद्यानिलयस्य स्नातकोत्तरशिक्षणविभागे अन्तिमवर्षस्य संस्कृतकक्ष्यां प्रवेष्टृभ्यः भवद्भ्यः सर्वेभ्यः हार्दं सुस्वागतं व्याहरामि ।

जगतीतलस्य प्राचीनतमभाषासु अग्रिमपङ्क्तौ विराजमाना संस्कृतभाषा अद्वितीयत्वेन वर्तते । वैदिकसंस्कृतं लौकिकसंस्कृतमिति संस्कृतं द्विधा विभक्तमस्ति । क्रिस्तपूर्वकाले वेदेषु दृश्यमानेयं भाषा क्रिस्तपूर्वपञ्चमशतके काव्यस्वरूपमलभत इति विदग्धाः विद्वांसः वदन्ति । उत्तरोत्तरकाले संस्कृतभाषासौ उन्नतशिक्षण-शासन-लेखन-काव्यादिषु सततं समुपयुज्यमाना सती सर्वत्र व्याप्तासीत् । विश्वस्य प्राचीनतमभाषासु संस्कृतभाषैव प्रप्रथमा इति भाषाविदः विमर्शकाश्च कथयन्ति । प्रायः लोके पञ्चसहस्र-वर्षाधिकम् इतिहासं लब्धवती संस्कृतादन्या भाषा एकापि नास्ति ।

चत्वारो वेदाः विविधानि शास्त्राणि रामायण-महाभारतनामकादीतिहासाः अष्टादशपुराणानि-उपपुराणानि षड्दर्शनानि अनेकानि काव्यानि शास्त्र-व्याख्यानानि प्रशस्तयः शासनानि चाटुपद्यानि सुभाषितानीत्येवं रीत्या विविधप्रकारेषु निबद्धाः कृतयः संस्कृतवाङ्मये भूरि विलसन्ति । एतेषां परिचयः पाठ्यक्रमानुरोधेन यथावकाशं कारयिष्यते । संस्कृते विशेषाध्ययनार्थं गहनतमसंशोधनार्थं च युष्माकं सज्जीकरणमेव स्नातकोत्तरशिक्षणस्य मुख्यः उद्देशः ।

आसु अन्तिमवर्षस्य कक्ष्यासु यूयं वेदसूक्तानि उपनिषदं-भगवद्गीतां वैदिकसाहित्यचरित्रं कौटलीयम्-अर्थशास्त्रम् याज्ञवल्क्यस्मृतिं वाल्मीकिरामायणे सुन्दरकाण्डस्य कांश्चन सर्गान् प्रबन्धलेखनानि वैयाकरणसिद्धान्तकौमुद्यां समासप्रकरणं भाषाशास्त्रम् आनन्दवर्धनस्य ध्वन्यालोकं मम्मटस्य काव्यप्रकाशं प्राचीना-र्वाचीनालङ्कारिकाणां परिचयं भारतीय-पाश्चात्यसाहित्यविमर्शयोः तुलनात्मकमध्ययनं च करिष्यथ ।

युष्माकं स्वाध्यायसुलभाय स्वयंबोधनपद्धत्या (SIM) उपर्युक्तविषयेषु पाठाः विशिष्टरूपेण विद्वद्भिः आरचितास्सन्ति । अनेके विद्वांसः एतान् पाठान् महता परिश्रमेण सज्जीकृतवन्तः तेषां साहाय्यं सकार्तज्ञं संस्मरामि ।

यूयं सर्वे एतान् सम्यगधीत्य एतेषु विषयेषु विशिष्टं ज्ञानं सम्पादयत इत्याशासे । "श्रद्धयाग्निः ज्ञानं समिध्यते" इति वेदवाण्यनुसारात् युष्माभिः श्रद्धाकृतंमध्ययनं फलप्रदं यशःप्रदं च भूयादिति मदीयः आशयः । शुभं भवतु ।

जीयात् गीर्वाणभारती

डा.एन्. राधाकृष्ण भट्
संस्कृतविभागाध्यक्षः
कर्णाटकराज्य-मुक्तविश्वविद्यानिलयः
मानसगङ्गोत्री, मैसूरु

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Block Introduction and Objectives

In this block you will be able to understand the first six prakaraṇas of of Yajñavalkyasmṛti 'Vyavahārādhyaya' divided into four units. साधारणव्यवहारमातृकाप्रकरण (General rules of procedure) and असाधारणमातृकाप्रकरण (Special rules of procedure) are dealt in first unit. In the second unit ऋणादान प्रकरण and निक्षेपप्रकरण are explained. The third unit deals with the साक्षिप्रकरण (the witnesses) while the fourth unit is on लेख्यप्रकरण dealing with documents.

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Unit - I
साधारण व्यवहारमातृकाप्रकरणम् ॥१॥
General rules of procedure

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Unit - I

साधारण व्यवहारमातृकाप्रकरणम् ||१||

General rules of procedure

1.1. Introduction

The protection of the subjects is the highest duty of a King. The protection is not possible without punishing the guilty. The detection of the guilty is not possible without the administration of justice. In order to administer the justice, the king is ought to trial the suits everyday surrounded by councillors. The various details of a trial viz., the nature, its kinds and procedure are being discribed in the second book known as **Vyavahārādhyāya.**

1.2. पाठ्यभागः :

व्यवहारान्नृपः पश्येद्विद्वद्भिर्ब्राह्मणैः सह |
धर्मशास्त्रानुसारेण क्रोधलोभविवर्जितः | |१

[व्यवहारात्, नृपः, पश्येत्, विद्वद्भिः, ब्राह्मणैः सह, धर्मशास्त्रानुसारेण, क्रोध-लोभ-विवर्जितः |]

The king, free from anger and avarice, should a minister justice, along with learned brāhmaṇas, in conformity with the principles of legal science (dharmaśāstra).

Vyavahāra : A complaint against another and having relation to one's self is a Vyavahāra. For instance where a

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certain person claims that the property is his and any other also claims in contradiction to him it is called Vyavahāra. The word Nṛpa indicates that the administer of justice is not the duty of a Kṣatriya order alone, but also of any other endowed with the authority to govern the subjects.

श्रुताध्ययनसंपन्ना धर्मज्ञाः सत्यवादिनः ।
राज्ञा सभासदः कार्या रिपौ मित्रे च ये समाः ।।२

[श्रुताध्ययनसंपन्नाः, धर्मज्ञाः, सत्यवादिनः राज्ञा, सभासदः, कार्या, रिपौ, मित्रे, च, ये, समाः ।।]

A king should select as his councillors, those persons, who have accomplished by learning and study, who know the law, who speak always the truth, and who are equal to both friends and foes alike.

[The council should consists of seven, five or three members. The councillors are apart from the brāhmaṇas. The distinction is that the brāhmaṇas are not appointed while the councillors are appointed. The councillors would become guilty if they do not advise the king on the facts as they stand and dissuade from committing mistakes. Apart from these, the council may be attended by a few merchants of good family, free from malice and possessing the qualification of high birth, character, age, good behaviour and tradition.]

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अपश्यता कार्यवशाद्व्यवहारान्नृपेण तु ।

सभ्यैः सह नियोक्तव्यो ब्राह्मणः सर्वधर्मवित् ।।३

[अपश्यता, कार्यवशात्, व्यवहारान्, नृपेण तु, सभ्यैः, सह, नियोक्तव्यः, ब्राह्मणः, सर्वधर्मवित्]

By a King, who is unable to attend to the administration of justice on account of other engagements, a brāhmaṇa, knowing all laws, should be appointed (in his place) to work along with the councillors.

In the absence of a suitable brāhmaṇa, the King may appoint a Kṣatriya, or a Vaiśya who are adept in Dharmasastras. A Śūdra should be avoided by all means according to Kātyāyana. The appointed person is named as Chief Justice or dharmādhikāri. The Nāradasmṛti indicates that a king is always decide suits ahering to the opinion of the Chief Justice and not to his own opinion. As a King depends on the spies in matters related to security, he relies on the chief justice in matters of dharma. He is also called 'prāḍvivākaḥ'. He who questions the plaintiff and the defendant is prāṭ and he, who administrates their statements, the inconsistent from the consistent is a vivākaḥ. The chief justice is a prāṭ as well as vivākaḥ and hence he is designated as prāḍvivākaḥ. He is defined as -

विवादानुगतं पृष्ट्वा समभ्यस्तप्रयत्नतः ।

विचारयति येनासौ प्राड्विवाकस्ततःस्मृतः ।।

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रागाल्लोभाद्भयाद्वापि स्मृत्यपेताधिकारिणः।
सभ्याः पृथक् पृथक् दण्ड्याः विवादाद्विगुणं धनम्।।४

[रागात्, लोभात्, भयात्, वा, अपि, स्मृत्यपेताधिकारिणः। सभ्याः, पृथक्, पृथक्, दण्ड्याः, विवादात्, द्विगुणं, धनम्।।]

Councillors acting in departure from the rules of Smṛtis and doing similar acts, out of passion, averse, or fear should each be seperately punished with a fine double (in amount of the fine for) the dispute.

[If the councillors deviate from the path of justice out of love, lure and fear, they are to be penalised each one severally with double the fine of the wealth accruing as damages on account of a defeat in the suit. But not the amount which is the subject matter of dispute.]

स्मृत्याचारव्यपेतेन मार्गेणाधर्षितः परैः।
आवेदयति चेद्राज्ञे व्यवहारपदं हि तत्।।५

[स्मृत्याचारव्यपेतेन, मार्गेण, अधर्षितः, परैः। आवेदयति, चेत्, राज्ञे, व्यवहारपदं हि, तत्।।]

If one, injured by others in a way, which is a violation of the (laws of) Smṛtis and usage, informs the King, that becomes a (fit) subject for a judicial proceeding (Vyavahāra).

Vyavahāra is a judicial proceeding or a complaint that consists of the claint, the answer, doubt, reasons, dedudctions, the evidence the decision and the reasons thereof.]

The Vyavahara, by Manu, is divided into 18 kinds : 1. the recovery of debts (ṛṇādāna), 2. deposit (nikṣepa), 3. sale without ownership (asvāmivikrayaḥ), 4. concerns of

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several partners together (sambhūya samutthānam), 5. resumption of gifts (dattasyānapakarma), 6. Non-payment of wages (vetanasya adānam), 7. breach of contract (samvidaśca vyatikramaḥ), 8. rescission of sale and purchase (Krayavikrayānuśayaḥ), 9. dispute between the owner and his servents (svāmipālayoḥ vivādaḥ), 10. the law of boundary disputes (sīmāvivādadharmaḥ), 11. assault (daṇḍapāruṣya), and slander (vākpāruṣya), 12. theft (steyam), 13. heinous offences (sāhasam), 14. Adultery or seduction (strīsaṅgrahaṇam), 15. the duties of husband and wife (strīpumdharmaḥ), 16. partition (vibhāgah), 17. gambling (dyūtam) and 18. betting (āhvaya).

These are the eighteen topics of judicial proceedings in the world. Even these have become multiplied into many more by varieties of the points at issue.

प्रत्यर्थिनोऽग्रतो लेख्यं यथावेदितमर्थिना ।
समामासतदर्धाहर्नामजात्यादिचिह्नितम् ।। ६

[प्रत्यर्थिनः, [illegible], यथा आवेदितं, अर्थिना । समामासतदर्धाहर्नामजात्[illegible]म् ।।]

Whatever is alleg[illegible] by the plaintiff should be reduced to writing in th[illegible] defendant, and marked with the year, th[illegible] [illegible]ight, the day, the name, the caste and the like.

The plaintiff (arthi) is the one who sets it up. The defendant (pratyarthi) is his opponent.

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श्रुतार्थस्योत्तरं लेख्यं पूर्वावेदकसंनिधौ।
ततोऽर्थि लेखयेत्सद्यः प्रतिज्ञातार्थसाधनम्।। ७

[श्रुतार्थस्य, उत्तरं, लेख्यं, पूर्वावेदकसंनिधौ। ततः, अर्थी, लेखयेत्, सद्यः, प्रतिज्ञातार्थसाधनम्।।]

The answer of the defendant, who has heard the plaint, should be taken down in writing, in the presence of the plaintiff or complainant. Next, the plaintiff should immediately have written down the evidence by means of which the matter in dispute is to be established.

[The answer (uttaram) is that which is a refutation of the complaint of the plantiff. It should be concise, unambiguous, not inconsistant and is easily intelligible without an explanation. The answer is four-fold viz., 1. admission (sampratipatti).

2. denial (mithyā), (The denial is of four kinds e.g. 'This is false', 'I donot know at all', 'I was not present there at that time' and 'I was not born at the time')

3. Confession is that where in he says 'Yes, I recieved, but returned it or obtained it as gift', and

4. avoidance is that in which he says 'I was sued by him on this issue and in which he was defeated in a trial at law. But again complaining'.]

तत्सिद्धौ सिद्धिमाप्नोति विपरीतमतोऽन्यथा।
चतुष्पाद्व्यवहारोऽयं विवादेषु प्रदर्शितः।।८

[तत्सिद्धौ, सिद्धिं, आप्नोति, विपरीतम्, अतः, अन्यथा, चतुष्पाद्, व्यवहारः, अयं, विदादेषु, प्रदर्शितः]

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If he succeeded in accomplishing the point of issue he obtains success; Otherwise (the non-accomplishment of the proof in any other manner) it brings the reverse (or defeat). This legal procedure (vyavahāra) is declared to be of four-fold character in litigation.

The litigation in the chapter on payment of debts, consist of four pārts viz., pratijña, uttara, sādhana and nirṇaya. Of these the first part is called the part relating to the plaint and begins with the text - 'pratyarthinaḥ agrato lekhyam') in the presence of the defendant the plaint should be written). The second part is relating to the answer and is introduced by the text. 'śṛtārthasyottaram lekhyam' (the answer of one who has heard the plaint should be taken down in writing). The third part related to evidence and proof and begins with the text - 'tato'rthi lekhayet sadyaḥ' (Next the plaintiff should cause to be written). The fourth part contains the decision regarding the proof of the point at issue and is in the text - 'tatsiddhau siddhimāpnoti' (If it (the proof) succeeds, he obtains success).

13 असाधारणव्यवहारमातृकाप्रकरणम् ।।२।।
Special rules of procedure

अभियोगमनिस्तीर्य नैनं प्रत्यभियोजयेत् ।।
अभियुक्तं च नान्येन नोक्तं विप्रकृतिं नयेत् ।।९

[अभियोगम्, अनिस्तीर्य, न, एनं, प्रत्यभियोजयेत् अभियुक्तं, च, न, अन्येन, न, उक्तम, विप्रकृतिं, नयेत् ।।]

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Until the complaint is disposed of, no counterclaim should be allowed against (the complainant). Nor should be any other person be allowed to file a complaint against one who is already under a charge nor what has already been alleged should be allowed to be changed.

[An accusation or a complaint regarding an offence is abhiyoga].

कुर्यात्प्रत्यभियोगं च कलहे साहसेषु च।
उभयोः प्रतिभूर्ग्राह्यः समर्थः कार्यनिर्णये।।१०

[कुर्यात्, प्रत्यभियोगं, च, कलहे, साहसेपु, च उभयोः, प्रतिभूः, ग्राह्यः, समर्थः, कार्यनिर्णये।।]

A countercharge may be allowed in cases of defamation and assualt. From both a security should be taken, who would be competant to satisfy the object of the judgement.

[Pratibhiūḥ :.One who becomes like a person involved in that cause, is called pratibhū (surity).]

निह्नवे भावितो दद्याद्धनं राज्ञे च तत्समम्।
मिथ्याभियोगी द्विगुणमभियोगाद्धनं वहेत्।।११

[निह्नव, भावितः, दद्यात्, धनं, राज्ञे, च, तत्, समम् मिथ्याभियोगी, द्विगुणं, अभियोगात्, धनं, वहेत्]

When, upon a denial (by the defendant), a claim is proved, he (defendant) should pay the amount claimed (to the plaintiff) and also an equal amount to the King. One

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setting up a false claim should pay double the amount claimed.

[bhāvitaḥ = The plaintiff who proves the claim].

साहसस्तेयपारुष्यगोभिशापात्यये स्त्रियाम् ।।
विवादयेत्सद्य एव कालोऽन्यत्रेच्छया स्मृतः ।।१२

[साहसस्तेयपारुष्यगोभिशापात्यये. स्त्रियाम् विवादयेत्, सद्यः, एव, कालः, अन्यत्र, इच्छया, स्मृतः ।।]

In charges regarding the killing of animals by means of poison, weapons, theft, assault and cow-murder and in complaints against defamatory imputations, as also in cases concerning women, the parties must be asked to plead immediately. In other suits time has been allowed under the discretion (of the court).

देशाद्देशान्तरं याति सृक्किणी परिलेढि च ।
ललाटं स्विद्यते चास्य मुखं वैवर्ण्यमेति च ।।१३
परिशुष्यत् स्खलद्वाक्यो विरुद्धं बहु भाषते ।
वाक्चक्षुः पूजयति नो तथोष्ठौ निर्भुजत्यपि ।।१४
स्वभावाद्विकृतिं गच्छेन्मनोवाक्कायकर्मभिः ।
अभियोगेऽथ साक्ष्ये वा दुष्टः स परिकीर्तितः ।।१५

[देशात्, देशान्तरं, याति, सृक्किणी, परिलेढि च ललाटं, स्विद्यते, च, अस्य, मुखं, वैवर्ण्यं, एति च ।।

परिशुष्यत्, स्खलत्, वाक्यः, विरुद्धं, बहु, भापते वाक्चक्षुः, पूजयति, नो, तथा, ओष्ठौ, निर्भुजति, अपि ।।

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स्वभावात्, विकृतिं, गच्छेत, मनोवाक्कायकर्मभिः अभियोगे, अथ, साक्ष्ये, वा, दृष्टः, स परिकीर्तितः ||]

Characteristics of a person who is unfit to be a complainant or a witness.

He, who shifts from place to place, licks his lips, whose forehead perspires, as also he whose countenance changes colour, who has a stammering and incoherent speech and talks inconsistantly and too much, who does nor respond to the speech or gaze of others and who moreover bites hi lips, who exhibits an inborn deformity in mind, speech, body and action, is known as defective and unfit to be a complainant or a witness.

सन्दिग्धार्थं स्वतन्त्रो साधयेद्यश्च निष्पतेत् |
न चाहूतो वदेत्किंचिद्धीनो दण्ड्यश्च स स्मृतः ||१६

[सन्दिग्धार्थं, स्वतन्त्रे, यः, साधयेत्, यः, च, निष्पतेत् न, च, आहूतो, वदेत्, किंचित्, हीनः, दण्ड्यः, च, सः, स्मृतः ||]

He, who tries to substantiate a doubtful claim independently (of the means of proof), he, who absconds, as also he, who, when summoned into the court does not say anything, is considered to be a false litigant and punishable as such.

साक्षिषूभयतः सत्सु साक्षिणः पूर्ववादिनः |
पूर्वपक्षेऽधरीभूते भवन्त्युत्तरवादिनः ||१७

[साक्षिषु, उभयतः, सत्सु, साक्षिणः, पूर्ववादिनः पूर्वपक्षे, अधरीभूते, भवन्ति उत्तरवादिनः ||]

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When there are witnesses for both sides, those for him who claims priority should be taken first; and if the first claim be invalidated, then those (i.e. the witness) of the next claimant should be examined.

सपणश्चेद्विवादः स्यात्तत्र हीनं तु दापयेत् ।
दण्डं च स्वपणं चैव धनिने धनमेव च ।।१८

[सपणः, चेत्, विवादः, स्यात्, तत्र, हीनं, तु, दापयेत् दण्डं, च स्वपणं, च, एव, धनिने, धनम्, एव, च ।।]

If a dispute is accompanied by a wager, then the defeated party should be made to pay a fine and the amount of the wager (to the king) and also the amount in dispute to the judgement creditor.

छलं निरस्य भूतेन व्यवहारान्नयेन्नृपः ।
भूतमप्यनुपन्यस्तं हीयते व्यवहारतः ।।१९

[छलं, निरस्य, भूतेन, व्यवहारान्, नयेत्, नृपः भूतम्, अपि, अनुपन्यस्तम्, हीयते, व्यवहारतः ।।]

After discarding all circumvention, the King should decide disputes according to the actual facts, for even a real claim (based on actual facts) is likely to be lost in a judicial proceeding if not properly presented.

निह्नुते लिखितं नैकमेकदेशविभावितः ।
दाप्यः सर्वं नृपेणार्थं न ग्राह्यस्त्वनिवेदितः ।।२०

[निह्नुते, लिखितं, न, एकम्, एकदेशविभावितः दाप्यः, सर्वं, नृपेण, अर्थं, न, ग्राह्यः, तु, अनिवेदितः ।।]

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Where the defendant sets up a denial and it is not confined to one only of the many particulars written in the plaint severally, and the claim is (afterwards) proved in one particular, he should be compelled by the King to pay the entire claim. He (the plaintiff) should not, however, be allowed to recover (from the defendant) what had been alleged in the plaint.

स्मृत्योर्विरोधे न्यायस्तु बलवान् व्यवहारतः।
अर्थशास्त्रात्तु बलवद्धर्मशास्त्रमिति स्थितिः।।२१

[स्मृत्योः, विरोधे, न्यायः, तु, बलवान्, व्यवहारतः अर्थशास्त्रात्, तु, बलवत्, धर्मशास्त्रम्, इति, स्थितिः।।]

Where two smṛtis conflict, principles of equity as determined by popular usage shall prevail. The rule, however, is that the science of law is stronger than the science of politics.

प्रमाणं लिखितं भुक्तिः साक्षिणश्चेति कीर्तितम्।
एषामन्यतमाभावे दिव्यान्यतममुच्यते।।२२

[प्रमाणम्, लिखितम्, भुक्तिः, साक्षिणः, च इति, कीर्तितम्। एषांम्, अन्यतमाभावे, दिव्यान्यतमम्, उच्यते।।]

Evidence has been laid down to consist of a writing, possession and witnesses. In the absence of any of these, the ordeal is said to be another (means of evidence).

[pramāṇa is that by means of which a thing is measured or discriminated (evidence). The evidence is of two-fold viz., human and divine. Of these human evidence

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is of three kinds i.e., writing, possession and witnesses. The writing (likhita) evidences are of two types : a royal grant (śāsana), and a scroll or deed (chīraka). Bhukti means enjoyment by actual occupation.

सर्वेष्वर्थविवादेषु बलवत्युत्तरा क्रिया।
आधौ प्रतिग्रहे क्रीते पूर्वा तु बलवत्तरा।।२३

[सर्वेषु, अर्थविवादेषु, बलवती, उत्तरा, क्रिया। आधौ, प्रतिग्रहे, क्रीते, पूर्वा, तु, बलवत्तरा।।]

In all civil disputes regarding property, evidence adduced in support of a later transaction preponderates. In the case of a pledge, a gift and a sale 'however' evidence in support of the prior claim preponderates.

[In all money disputes such as payment of debts and other transactions, the evidence in support of a later transaction will preponderate and the party setting it up will become successful. In such a case, even if the allegation in the plaint be established, the party setting it up is defeated. Because the general rule is that of two contradictory facts, unless the prior fact is refuted, the truth of the later one does not become established as it comes later. It has also been said 'a later fact is not established unless the prior one is refuted'. And also in the suits of a pledge, gift and sale, proof of a prior claim alone preponderates. For instance, when a man after mortagaging his field with one and obtains some loan, again mortagages it with another and obtains another loan, his mortagaged field belongs to the first only and not to the second.]

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पश्यतोऽब्रुवतो भूमेर्हानिर्विंशतिवार्षिकी।
परेण भुज्यमानाया धनस्य दशवार्षिकी।।२४

पश्यतः, अब्रुवतः, भूमेः, हानिः, विंशतिवार्षिकी परेण, भुज्यमानायाः, धनस्य, दशवार्षिकी।।

If a person looking on and does not object his land being enjoyed by another continuously for twenty years, he would loose the right on it. Of wealth, however, the loss occurs after ten years.

आधिसीमोपनिक्षेपजडबालधनैर्विना।
तथोपनिधिराजस्त्रीश्रोत्रियाणां धनैरपि।।२५

[आधिसीमोपनिक्षेपजडबालधनैः, विना तथा, उपनिधिराजस्त्रीश्रोत्रियाणां, धनैः, अपि।।]

(Here an exception is being mentioned to the above rule)

Except in the case of pledges (ādhi), boundaries (sīmā) open deposits (upanikṣepa), wealth belonging to the dull in intellect, the minor (jaḍabāladhanaiḥ), as also in the case of sealed deposits (upanidhi) and wealth belonging to the Kings, women and Brāhmaṇas.

आध्यादीनां विहर्तारं धनिने दापयेद्धनम्।
दण्डं च तत्समं राज्ञे शक्त्यपेक्षमथापि वा।।२६

[आध्यादीनां, विहर्तारम्, धनिने, दापयेत्, धनम् दण्डं, च, तत्, समम्, राज्ञे, शक्त्यपेक्षम्, अथ, अपि, वा।।]

A tresspasser upon pledges etc. should be made to pay

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the amount (the subject of dispute) to the owner. And also made to pay the King a five of equal amount or according to his capacity.

आगमोऽभ्यधिको भोगाद्विनापूर्वक्रमागतात् ।
आगमेऽपि बलं नैव भुक्तिः स्तोकापि यत्र नो । ।२७

[आगमः, अभ्यधिकः, भोगात्, विना, पूर्वक्रमागतात् आगमे, अपि, बलं, न, एव, भुक्तिः, स्तोकापि, यत्र, न । ।]

Title is superior to possession excepting where the possession has descended from a line of ancestors. Even in a title there is no force if there is no possession even for a short time.

[The origin of ownership such as gift, purchase etc., is called title (āgama). It is more powerful than possession which is dependant upon title. Even the title is not effective, if the possession has come down from a line of the past three ancesotrs.]

आगमस्तु कृतो येन सोऽभियुक्तस्तमुद्धरेत् ।
न तत्सुतस्तत्सुतो वा भुक्तिस्तत्र गरीयसी । ।२८

[आगमः, तु, कृतः, येन, सः, अभियुक्तः, तम्, उद्धरेत् न, तत्, सुतः, तत्, सुतः, वा, भुक्तिः, तत्र, गरीयसी । ।]

He who made the acquisition of a title if sued should prove it, (but) not his son nor his son's son. Because in their case possession has more force.

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योऽभियुक्तः परेतः स्यात्तस्य रिक्थी तमुद्धरेत् ।
न तत्र कारणं भुक्तिरागमेन विना कृता ।।२९

[यः, अभियुक्तः, परेतः, स्यात्, तस्य, रिक्थी, तम्, उद्धरेत न, तत्र, कारणं, भुक्तिः, आगमेन, विना, कृता ।।]

If a person, happen to die while a suit was filed against him, his legal heir should prove it. In such a case possession is no evidence (of ownership) if it is not proved to be accompanied with title.

[Abhiyukta is he, a trespasser, against whom a suit had been filed;

paretaḥ = happen to depart to the next world ie happen to die.]

नृपेणाधिकृताः पूगाः श्रेणयोऽथ कुलानि च ।
पूर्वं पूर्वं गुरु ज्ञेयं व्यवहारविधौ नृणाम् ।।३०

[नृपेण, अधिकृताः, पूगाः, श्रेणयः, अथ, कुलानि, च पूर्वं, पूर्वं, गुरु, ज्ञेयं, व्यवहारविदौ, नृणाम् ।।]

In a matter of legal proceedings between men, officers appointed by the King, the pūgas, the Śreṇis, and the kulas (each of these) preceedings should be considered to be in the superior order of priority.

[Pūgas - Men belonging to different castes and following different occupations, but residents of the same place eg., a city, town etc.

Śreṇayah - trade guilds of persons earning their livelihood by the same kind of labour whether belonging to

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different castes or to the same caste e.g. the dealers in the cattle, beetle, the weaver and the currier.

Kulāni - groups of caste people, relative or coguates.

Among these each succeeding one is superior to the one preceeding him in order. In the case of a suit decided by officers appointed by the King, there would be no fresh hearing before pūgas etc. on the ground of a wrong judgement even if the defeated party is dissatified. Similarly even in the suit decided by pūga, there would be no appeal to Śreṇis etc. So on a decision by the Śreṇi there can be no resort to the Kula. But from the decision of the Kula one may go to the Śreṇi etc. from the decision of the Śreṇi to the pūga and from the judgement of the pūga to the officers appointed by the King.]

बलोपाधिविनिर्वृत्तान् व्यवहारान्निवर्तयेत् ।
स्त्रीनक्तमन्तरागारबहिः शत्रुकृतांस्तथा । ।३१

[बलोपाधिविनिर्वृत्तान्, व्यवहारान्, निवर्तयेत् स्त्रीनक्तम्, अन्तरागारबहिः, शत्रुकृतान्, तथा ।]

Transactions brought about by force or fraud should be upset, so also those entered into by women, at night, in the interior of the house, outside or with the enimies.

मत्तोन्मत्तार्तव्यसनिबालभीतारियोजितः ।
असंबन्धकृतश्चैव व्यवहारो न सिद्ध्यति । ।३२

[मत्त-उन्मत्त-आर्त-व्यसनि-बाल-भीत-अरियोजितः असंबन्धकृतः, च, एव, व्यवहारः, न, सिद्धयति । ।]

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A transaction entered into by a person (who is) intoxicated, or insane, or afflicted with disease, by one in distress or by a minor, or one frightened, or the like will not be upheld, and as also that entered into by one who has no connection.

[matta - intoxicated; unmatta - affected by insanity caused by either of the five causes viz., from vāta, pitta, śleṣma, a combination of these or by evil spirit; ārtaḥ - afflicted with a disease; vyasana - distress or pain caused by the seperation from the beloved and acquisition of the undesired.]

प्रनष्टाधिगतं देयं नृपेण धनिने धनम्।
विभावयेन्न चेल्लिङ्गैस्तत्समं दण्डमर्हति।।३३

[प्रनष्टाधिगतम्, देयम्, नृपेण, धनिने, धनम् विभावयेत्, न, चेत्, लिङ्गैः, तत्, समं, दण्डम्, अर्हति।।]

The lost wealth when (subsequently) recovered should be given by the King to the owner. If he (the claimant) do not identify it by (supplying) marks (of identification), he is liable to an equal (amount of) fine.

राजा लब्ध्वा निधिं दद्याद्द्विजेभ्योऽर्धं द्विजः पुनः।
विद्वानशेषमादद्यात्स सर्वस्य प्रभुर्यतः।।३४
इतरेण निधौ लब्धे राजा षष्ठांशमाहरेत्।
अनिवेदितविज्ञातो दाप्यस्तं दण्डमेव च।।३५

[राजा, लब्ध्वा, निधिं, दद्यात्, द्विजेभ्यः, अर्धं, द्विजः, पुनः विद्वान्, अशेषम्, आदद्यात्, सः, सर्वस्य, प्रभुः, यतः।।

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इतरेण, निधौ, लब्धे, राजा, षष्टांशम्, आहरेत् अनिवेदितविज्ञातः, दाप्यः, तं, दण्डं, एव, च।।]

The King having found a treasure-trove, should give half to the twice-born. But a learned (brāhmaṇa) finding (a treasure-trove) may keep the whole as he is the lord of all. 34

If treasure-trove is found by any other, the King should give him a sixth part. If (however) the information is not given (by the finder) and he is found out, the finder should be made to pay a fine. 35

देयं चोरहृतं द्रव्यं राज्ञा जानपदाय तु।
अददद्धि समाप्नोति किल्बिषं यस्य तस्य तत्।।३६

[देयम्, चोरहृतम्, द्रव्यम्, राजा, जानपदाय, तु अददत्, हि, समाप्नोति, किल्बिषम्, यस्य, तस्य, तत्।।]

The King should pay the wealth taken away by the robbers (and recovered by him from them) to the people of his country; and if he do not pay he incurs the sin of the robbed as well as of the robbers.

1.4 Self Check Questions

1. साधारण व्यवहारं विवृणुत।
2. असाधारणव्यवहारं निरूपयत।

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Unit - II
अथ ऋणादानप्रकरणम् ||३||
Recovery of Debts

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2.4 Self Check Questions

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Unit - II
अथ ऋणादानप्रकरणम् ||३||
Recovery of Debts

2.1 Introduction

The 'recovery of debt' involves two persons - the debtor and the creditor. There are seven points in the recovery of debts. 1. The kind of debt which should be paid, 2. the one which should not be paid, 3. by what person should be paid, 4. what particular time to be paid, 5. in what way to be paid (these are related to the debtor), 6. the mode of advancing a loan and 7. also the mode recovering it (these two are related to creditor)

The author commences the chapter with the rule regarding the advance by the creditor as it is the first of all others.

2.2. पाठ्यभागः :

अशीतिभागो वृद्धिः स्यात् मासि मासि सबन्धके |
वर्णक्रमाच्छतं द्वित्रिचतुःपञ्चकमन्यथा | |३७

[अशीतिभागः, वृद्धिः, स्यात्, मासि, मासि, सबन्धके वर्णक्रमात्, शंत, द्वित्रिचतुःपञ्चकम्, अन्यथा | |]

An eightieth part (of the principal) is the interest (allowed) every month, when the debt is (secured) by a pledge. In other cases, it may be two, three, four or five

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percent respectively according to the order of the class (of the debtor)

(Bandhaka is that which is deposited as a security in pledge. Generally in such security transactions, the interest on the money advanced would be eightieth part of the principal, according to law. In the case of Brāhmaṇa, Kṣatriya, Vaiśya and sūdra, the interest may be two, or three, or four, or five respectively. The Vṛddhi or interest is of four kinds. The interest payable every month is Kālikā, the interest fixed according to the wish of the parties is called Kāritā, if the interest is in the form of bodily labour it is Kāyikā. The interest upon interest is called compound interest (cakravṛddhi)

"कायिका कालिका चैव कारिता च ततः परा।
चक्रवृद्धिश्च शास्त्रेषु तस्य वृद्धिश्चतुर्विधा।।
कायाविरोधिनी शश्वत्पणपादादि कायिका
प्रतिमासं स्रवन्ती या वृद्धिः सा कालिका मता।
वृद्धिः सा कारिता याधमर्णिकेन स्वयंकृता।।
वृद्धेरपि पुनर्वृद्धिश्चक्रवृद्धिरुदाहृता" (नारदस्मृति) ३७

कान्तारगास्तु दशकं सामुद्रा विंशकं शतम्।
दद्युर्वा स्वकृतां वृद्धिं सर्वे सर्वासु जातिषु।। ३८

[कान्तारगाः, तु, दशकं, सामुद्रा, विंशकम्, शतम् दद्युः, वा, स्वकृतां, वृद्धिं, सर्वे, सर्वासु, जातिषु।।]

Persons (usually) travelling through forests should pay ten percent and those who travel by sea twenty percent. Or all should pay what they agree to among all classes

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(whether they are secured or unsecured).

[The creditor should taken ten percent from those who go to the forests and twenty percent from those who go to the sea as there is a danger of the loss of the principal also. These transactions are to be held as per the agreements.]

सन्ततिस्तु पशुस्त्रीणां रसस्याष्टगुणा परा।
वस्त्रधान्यहिरण्यानां चतुस्त्रिद्विगुणा परा।।३९

[सन्ततिः, तु, पशुः, स्त्रीणां, रसस्य, अष्ट गुणाः, परा वस्त्र-धान्य-हिरण्यानां, चतु-स्त्रि-द्विगुणः, परा।।]

In the case of female beasts the interest is their progeny. In the case of fluid the utmost limit for (the accumulation of) interest is eight-fold. The interest of the principal loan advanced should be four-fold, three-fold and two-fold in the case of cloth, grain and gold respectively.

प्रपन्नं साधयन्नर्थं न वाच्यो नृपतेर्भवेत्।
साध्यमानो नृपं गच्छेद्दण्ड्यो दाप्यश्च तद्धनम्।।४०

[प्रपन्नम्, साधयन्, अर्थम्, न, वाच्यः, नृपतेः, भवेत् साध्यमान, नृपं, गच्छेत्, दण्ड्यः, दाप्यः, च, तत्, धनम्।।]

One (a creditor) would nct be blamed by the King for trying to recover an acknowledged debt. If the debtor complain to the King while the debt is being recovered from him, he should be fined and made to pay the loan.

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गृहीतानुक्रमाद्दाप्यो धनिनामधमर्णिकः ।
दत्त्वा तु ब्राह्मणायैव नृपतेस्तदनन्तरम् ।।४१

[गृहीतानुक्रमात्, दाप्यः, धनिनाम्, अधमर्णिकः दत्त्वा, तु, ब्राह्मणाय, एव, नृपतेः, तत्, अनन्तरम् ।।]

A debor should be made to pay his creditors in the order of the receipt of the loans. After paying off a brāhmaṇa (creditor), then alone the Kṣatriya should be paid.

[When the creditors are of the same class, the debtor should be made to pay the creditors in the same order in which the loans were taken. When, however, the creditors belong to different classes, the brāhmaṇs should be paid first and then the rest in order.]

राज्ञाऽधमर्णिको दाप्यः साधिताद्दशकं शतम् ।
पञ्चकं च शतं दाप्यः प्राप्तार्थो ह्युत्तमर्णिकः ।।४२

[राज्ञा, अधमर्णिकः, दाप्यः, साधितात्, दशकं शतम् पण्चकम्, च, शतम्, दाप्यः, प्राप्तार्थः, हि, उत्तमर्णिकः ।।]

A debtor should be made to pay, by the King, to himself ten percent of the amount recovered and a creditor who has won his case should be made to pay five percent.

[adhamarṇikaḥ = a debtor.

uttamarṇikaḥ = a creditor

The King should take from the debtor in the shape of fine, a tenth portion of the amount recovered from the acknowledged amount. And the creditor, however, who has won his case should pay five percent in the form of costs.]

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हीनजातिं परिक्षीणमृणार्थं कर्म कारयेत्।
ब्राह्मणस्तु परिक्षीणः शनैर्दाप्यो यथोदयम्।।४३

[हीनजातिं, परिक्षीणम्, ऋणार्थम्, कर्म, कारयेत् ब्राह्मणः, तु, परिक्षीणः, शनैः, दाप्यः, यथा, उदयम्।।]

An insolvent debtor of a lower class should be made to work for his debt. A brāhmaṇa insolvent, however, should be made to pay by installments according to his ability.

दीयमानं न गृह्णाति प्रयुक्तं यः स्वकं धनम्।
मध्यस्थस्थापितं चेत्स्याद्वर्धते न ततः परम्।।४४

[दीयमानं, न, गृह्णाति, प्रयुक्तं, यः, स्वकम्, धनम्। मध्यस्थस्थापितम्, चेत्, स्यात्, वर्धते, न, ततः, परम्।।]

When a creditor does not accept back an amount lent when tendered, and if the same is deposited with a third person, it will not carry interest from that time.

अविभक्तैः कुटुम्बार्थे यदृणं तु कृतं भवेत्।
दद्युस्तद्रिक्थिनः प्रेते प्रोषिते वा कुटुम्बिनि।।४५

[अविभक्तैः, कुटुम्बार्थे, यत्, ऋणम्, तु, कृतम्, भवेत् दद्युः, तत्, रिक्थिनः, प्रेते, प्रोषिते, वा, कुटुम्बिनि।।]

A debt which has been incurred for family purposes by the undivided members should be paid by all the members of the family (coparceners), when the head of the family is either dead or has gone abroad.

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न योषित्पतिपुत्राभ्यां न पुत्रेण कृतं पिता।
दद्यादृते कुटुम्बार्थान्न पतिः स्त्रीकृतं तथा।।४६

[न, योषित्पतिपुत्राभ्याम्, न, पुत्रेण, कृतम्, पिता दद्यात्, ऋते, कुटुम्बार्थात्, न पतिः, स्त्रीकृतम्, तथा।।]

A woman need not pay a debt incurred by her husband or son; nor a father that incurred by the son; nor a husband that of the wife, except when it is contracted for family purposes.

[For a family purpose, the debt, raised by any member of the family should be paid by the head of the family. In his absence, it should be paid by those who are entitled to take his share.]

सुराकामद्यूतकृतं दण्डशुल्कावशिष्टकम्।
वृथादानं तथैवेह पुत्रो दद्यान्न पैतृकम्।।४७

[सुरा-काम-द्यूतकृतम्, दण्डशुल्कावशिष्टकम् वृथादानम्, तथा, एव, इह, पुत्रः, दद्यात्, न पैतृकम्।।]

The son should not pay the paternal debt which was contracted for the purposes of spirituous liquour, lust or gambling, or which is due as the balance of an unpaid fine or toll as also a gift without any consideration.

[Vṛthādānam = that has been promised to rogues, bards, wrestlers etc.]

गोपशौण्डिकशैलूषरजकव्याधयोषिताम्।
ऋणं दद्यात्पतिस्तेषां यस्माद्वृत्तिस्तदाश्रया।।४८

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[गोप-शौण्डिक-शैलूष-रजक-व्याधयोषिताम् ऋणं, दद्यात्, पतिः, तेषाम्, यस्मात्, वृत्तिः, तत्, आश्रया । ।]

The debt of the wife of a herdsman, vintner, dancer, washerman or hunter should be paid by the husband; since their livelihood depends upon them.

प्रतिपन्नं स्त्रिया देयं पत्या वा सह यत् कृतम् ।
स्वयं कृतं वा यदृणं नान्यत् स्त्री दातुमर्हति । ।४९

[प्रतिपन्नम्, स्त्रिया, देयम्, पत्या, वा, सह, यत्, कृतम् स्वयम्, कृतम्, वा, यत्, ऋणम्, न, अन्यत्, स्त्री, दातुम्, अर्हति । ।]

A debt agreed to by her, or which was contracted by her jointly with the husband, or by herself (alone) should be paid by a woman. A woman is not bound to pay any other debt.

The next verse states what debt, at what time and when should it be paid -

पितरि प्रोषिते प्रेते व्यसनाभिप्लुतेऽपि वा ।
पुत्रपौत्रैर्ऋणं देयं निह्नवे साक्षिभावितम् । ।५०

[पितरि, प्रोषिते, प्रेते, व्यसनाभिप्लुते, अपि, वा पुत्रपौत्रैः, ऋणाम्, देयम्, निह्नवे, साक्षिभावितम् । ।]

When the father has gone abroad, is dead or is immersed in difficulties, his debt, should be paid by the sons and grandsons, when established by witnesses in case of a dispute.

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रिक्थग्राही ऋणं दाप्यो योषिद्ग्राहस्तथैव च।
पुत्रोऽनन्याश्रितद्रव्यः पुत्रहीनस्य रिक्थिनः।।५१

[रिक्थग्राही, ऋणाम्, दाप्यः, योषिद्राहः, तथा, एव, च पुत्रः, अनन्याश्रितद्रव्यः, पुत्रहीनस्य, रिक्थिनः।।]

The heir, who takes the heritage, as also he, who takes the woman (of the diseased) should be made to pay his debts, or (failing these) the son when the parental estate has not gone to another. Of a sonless man, those who take the heritage (should be made to pay the debts.)

[riktha - property becomes one's own otherwise than by purchase etc; (heritage)

rikthagrāhaḥ - He who takes the heritage by inheritance.

Yoṣidgrahaḥ - One, who takes the wife of another.]

भ्रातृणामथ दम्पत्योः पितुः पुत्रस्य चैव हि।
प्रातिभाव्यमृणं साक्ष्यमविभक्ते न तु स्मृतम्।।५२

[भ्रातृणाम्, अथ, दम्पत्योः, पितुः, पुत्रस्य, च, एव, हि प्रातिभाव्यम्, ऋणम्, साक्ष्यम्, अविभक्ते, न, तु, स्मृतम्।।]

Among brothers, husband and wife, and father and son, the relation of suretyship, lending or being witnesses, has not been allowed while they are undivided.

दर्शने प्रत्यये दाने प्रातिभाव्यं विधीयते।
आद्यौ तु वितथे दाप्यावितरस्य सुता अपि।।५३

[दर्शनि, प्रत्यये, दाने, प्रातिभाव्यम्, विधीयते आद्यौ, तु, वितथे, दाप्यौ, इतरस्य, सुता, अपि।।]

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Suretyship is ordained for appearance, assurance and for payment. The first two, however, should be made to pay in case of default, while in the case of the last, even the sons (should be made to pay).

[pratibhāvyam - Suretyship is a contract with another person with the object of creating confidence. It is of three-fold according to the difference in the subject matter. For example, for apperance, one would say that 'I shall produce him whenever his appearance is necessary'; for assurance he would say that 'lend him money upon my assurance he will not decieve you'; For payment, he says that 'If he does not pay, then I myself will pay'.]

दर्शनप्रतिभूर्यत्र मृतः प्रात्ययिकोऽपि वा ।
न तत्पुत्रा ऋणं दद्युर्दद्युर्दानाय यः स्थितः ।।५४

[दर्शनप्रतिभूः, यत्र, मृतः, प्रात्यायिकः, अपि, वा न, तत्, पुत्रा, ऋणम्, दद्युः, दद्युः, दानाय, यः, स्थितः ।।]

Where a surety for appearance or a surety by assurance dies the sons of such a one must not pay; (but) in the case of surety for payment, they should pay.

बहवः स्युः ... स्वांशैर्दद्युः प्रतिभुवो धनम् ।
एकच्छायाश्रितेषु धनिकस्य यथारुचि ।।५५

[बहवः स्युः ... स्वांशैः, दद्युः प्रतिभुवः धनम् एकच्छायाश्रितेषु, ... धनिकस्य, यथारुचि ।।]

When there are more sureties than one, they should pay an amount proportionate to their share. But when they

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are bound jointly and severally they may pay according to the choice of the creditor.

प्रतिभूर्दापितो यत्तु प्रकाशं धनिनां धनम् ।
द्विगुणं प्रतिदातव्यमृणिकैस्तस्य तद्भवेत् ।।५६

[प्रतिभूः, दापितः, यत्, तु, प्रकाशम्, धनिनाम्, धनम् द्विगुणम्, प्रतिदातव्यम्, ऋणिकैः, तस्य, तत्, भवेत् ।।]

For a debt which a surety has been made to pay publicity to the creditor, double that amount becomes repayable to him by the debtors.

[This is a general rule. The exception rule will be mentioned in the next verse.]

सन्ततिः स्त्रीपशुष्वेव धान्यं त्रिगुणमेव च ।
वस्त्रं चतुर्गुणं प्रोक्तं रसाश्चाष्टगुणास्तथा ।।५७

[सन्ततिः, स्त्रीपशुषु, एव, धान्यम्, त्रिगुणम्, एव, च वस्त्रं, चतुर्गुणम्, प्रोक्तम्, रसाः, च, अष्टगुणाः, तथा ।।]

Progeny in the case of female beasts, three-fold in the case of corn, four-fold in the case of cloths and eight-fold in the case of liquids.

In a loan transaction of money the guarantee to be offered to the creditor is two-fold viz. a surety and a pledge. So far surety is explained. Now the pledge is being described.

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आधिः प्रणश्येद्द्विगुणे धने यदि न मोक्ष्यते।
काले कालकृतो नश्येत्फलभोग्यो न नश्यति।।५८

[आधिः, प्रणश्येत्, द्विगुणे, धने, यदि, न, मोक्ष्यते काले, कालकृतः, नश्येत्, फलभोग्यः, न, नश्यति।।]

A pledge lapses, if (it is) not redeemed by the time the principal amount is doubled; that with a time limit, (lapses) by (the lapse of) the time; a usufructuary pledge never lapses.

[Ādhi - A pledge i.e. deposited or hypothecation of a thing by the debtor with the creditor for the sake of creating confidence for the amount borrowed. The pledge is of two kinds : Kālakṛta, a pledge with a time limit and akṛtakāla, a pledge with no time-limit. Each of these again is two-fold. Pledge for custody and a pledge for use. Phalabhogyaḥ - usufructuary is that where the profits are to be enjoyed and it does not lapse at any time.]

गोप्याधिभोगे नो वृद्धिः सोपकारेऽथ हापिते।
नष्टो देयो विनष्टश्च दैवराजकृतादृते।।५९

[गोप्याधिभोगे, नः, वृद्धिः, सोपकारे, अथ, हापिते नष्टः, देयः, विनष्टः, च, दैवराजकृतात्, ऋते।।]

There shall be no interest if a pledge for custody be used or one for use be damaged. A pledge, which is spoiled or destroyed entirely shall be paid, unless it be by the act of god or the king.

[A pledge for custody, if damaged, should be returned after it is restored to its former condition. And if it is used

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also, even the interest shall be forfeited. A pledge for use, if spoiled, should be made as it was before and then returned. It it carries interest, the interest should be given up. When it is perished completely, such a one also should be paid by paying the price.]

आधेः स्वीकरणात्सिद्धी रक्ष्यमाणोऽप्यसारताम्।
यातश्चेदन्य अधेयो धनभाग्वा धनी भवेत्।।६०

[आधेः, स्वीकरणात्, सिद्धी, रक्ष्यमाणः, अपि, असारताम् यातः, चेत्, अन्यः, अधेयो, धनभाग्, वा, धनी, भवेत्।।]

The (contract of) pledge is established by the (proof of its) acceptance (by the creditor). If it suffers deterioration even when carefully kept, another must be substituted or the creditor must recieve the amount (due to him).

चरित्रबन्धककृतं स वृद्ध्या दापयेद्धनम्।
सत्यंकारकृतं द्रव्यं द्विगुणं प्रतिदापयेत्।।६१

[चरित्रबन्धककृतम्, सः, वृद्ध्या, दापयेत्, धनम् सत्यंकारकृतम्, द्रव्यम्, द्विगुणम्, प्रतिदापयेत्।।]

In the case of a debt contracted on a Charitra pledge, the amount must be paid with interest and in the case of a debt contracted on chattel delivered as an earnest he shall pay two-fold.

[Charitram - good conduct. Pledge by Charitra is a charitra pledge.]

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उपस्थितस्य मोक्तव्य आधिः स्तेनोऽन्यथा भवेत् ।
प्रयोजकेऽसति धनं कुले न्यस्याधिमाप्नुयात् ॥६२

[उपस्थितस्य, मोक्तव्यः, आधिः, स्तेनः, अन्यथा, भवेत् प्रयोजके, असति, धनम्, कुले, न्यस्य, अधिम्, आप्नुयात् ॥]

A pledge should be restored to the debtor when he comes to redeem it, otherwise, the creditor would be (liable as) a theif. If the creditor be absent, the debtor may pay the amount to (a member of) his family and take back his pledge.

तत्कालकृतमूल्यो वा तत्र तिष्ठेदवृद्धिकः ।
विना धारणकाद्वापि विक्रीणीत ससाक्षिकम् ॥६३

[तत्कालकृतमूल्यः, वा, तत्र, तिष्ठेत्, अवृद्धिकः विना, धारणकात्, वा, अपि, विक्रीणीत, ससाक्षिकम् ॥]

Or appraised at its value at that time the pledge will remain there without interest. (Or the creditor) may sell (the pledge) in the presence of witnesses even without (the presence of) the debtor.

यदा तु द्विगुणीभूतमृणमाधौ तदा खलु ।
मोच्य आधिस्तदुत्पन्ने प्रविष्टे द्विगुणे धने ॥६४

[यदा, तु, द्विगुणी भूतम्, ऋणम्, आधौ, तदा, खलु मोच्य, आधिः, तत्, उत्पन्ने, प्रविष्टे, द्विगुणे, धने ॥]

When, however, a debt under a transaction of pledge has become doubled (by the accumulated interest) then the pledge shall be returned after double the principal amount

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has been recieved (by the creditor) from the profits.

It is intended to lay down the rule that a pledge is to be enjoyed only for paying off entirely the original loan together with interest. It is called in popular language a kṣyādhi (a pledge where the liability is diminished.)

22 अथ निक्षेपप्रकरणम् ।।४।।
The law of Deposits

वासनस्थमनाख्याय हस्तेऽन्यस्य यदर्प्यते।
द्रव्यं तदौपनिधिकं प्रतिदेयं तथैव तत्।। ६५

[वासनस्थम्, अनाख्याय, हस्ते, अन्यस्य, यत्, अर्प्यति द्रव्यम्, तत्, औपनिधिकमं, प्रतिदेयम्, तथा, एव, तत्।।]

Properly, which being placed in a box, is delivered into the hands of another without being described, is called a deposit. And it should be returned in the same condition (in which is was when delivered.)

[A container, that holds the thing deposited is a box (vāsana) eg. Karaṇḍa. The particulars as to the quality and the quantity of which is not to be described and to be sealed is the deposited property. Nārada descriminates the deposit as upanidhi, a property being under a seal without being counted and nikṣepa is that which is counted.]

न दाप्योपहृतं तं तु राज़दैविकतस्करैः।
भ्रेषश्चेन्मार्गितेऽदत्ते दाप्यो दण्डं च तत्समम्।। ६६

[न, दाप्यः, अपहृतम्, तम्, तु, राज-दैविक-तस्करैः भ्रेषः, चेत्, मार्गिते, अदत्ते, दाप्यः, दण्डम्, च, तत्, समम्।।]

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That, however, which has been carried away by (an act of) the King, natural calamities, or thrives shall not be caused to be restored. When, however, the loss occurs after demand and non-payment, the depositary should be fined and compelled to pay an (amount) equal (to the deposit).

आजीवन् स्वेच्छया दण्ड्यो दाप्यस्तं चापि सोदयम् ।
याचितान्वाहितन्यासनिक्षेपादिष्वयं विधिः ।।६७

[आजीवन्, स्वेच्छया, दण्ड्यः, दाप्यः, तम्, च, अपि, सोदयम्
याचितान्वाहितन्यासनिक्षेपादिषु, अयम्, विधिः ।।]

If, the bailee, of his own will, makes a living, he shall be punished and also made to pay it with the increase. The same law applies in the cases of yācita, anvāhita, nyāsa, nikṣepa and such others.

[Without the permission of the owner, if the depositor deals with the property by lending at interest with a view to make a profit, he should be made to restore the deposit with the increase. The cloths and ornaments are begged for and taken away on festive or special occasions is called Yācita; where a thing is placed in the hands of one and by him also afterwards has been placed in the hands of another with a direction 'please give it to the owner' - is called anvāhitam. Nyāsa is delivery to a member of the house in the absence of the owner and without being shown to him with the direction - 'this is to be made over to the owner of the house'. A delivery in the presence of the owner is called nikṣepa.]

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2.3 Self Check Questions

1. ऋणादानप्रकरणं संगृह्णीत।
2. निक्षेपप्रकरणं निरूपयत।

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Unit - III
अथ साक्षिप्रकरणम् ||५||
The Witnesses

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3.1. Introduction

3.2. पाठ्यभागः :

3.3 Self Check Questions

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Unit - III
अथ साक्षिप्रकरणम् ॥५॥
The Witnesses

3.1 Introduction

Now the examination of the nature of Witnesses, which is laid down as one of the three constituents of an evidence, is dealt with in the chapter. One becomes a proper witness by his actually having seen or heard a thing. Such a witness is of two fold - appointed and unappointed. When marked as a witness he is called an appointed and when not marked an unappointed. Of these the appointed is of five kinds and unappointed of six and thus these witnesses are of eleven kinds. The five appointed witnesses are : 1. a subscribing witness, 2. one who has been reminded, 3. a casual witness, 4. a secret witness and 5. an indirect witness. The six kinds of the unappointed witnesses are : 1. The village, 2. a judge, 3. a King, 4. One commissioned for (special) duties, 5. one deputed by the claimand and 6. members of a family concerned.

3.2. पाठ्यभागः :

तपस्विनो दानशीलाः कुलीनाः सत्यवादिनः ।
धर्मप्रधाना ऋजवः पुत्रवन्तो धनान्विताः ॥ ६८
त्र्यवराः साक्षिणो ज्ञेयाः श्रौतस्मार्तक्रियापराः ।
यथाजाति यथावर्णं सर्वे सर्वेषु वा स्मृताः ॥६९

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Men devoted to religious austerities, men liberally disposed, men sprung from high families, truthful men, men devoted to religious observations, straight forward men, men blessed with sons and men possessed of wealth are competent witnesses (provided they are) not less than three, and devoted to the performance of Śrauta and Smārta rites, each respectively according to their caste or class or all for all (castes and classes).

[yathājāti and yathāvarṇa = For the people of one caste, class and gender, the same caste, class and gender people should act as witnesses. A mūrdhāvasikta for a mūrdhavasikta, a brahmaṇa for a brāhmaṇa a woman for a woman etc. In the absence of witnesses of the afore said description in order to establish the rule that others for whom there is no objection may be accepted as witnesses. Nārada pointsout five sorts of people who are not fit to be witnesses. They are : the people on account of depravity, of contradiction, on account of voluntary deposition, or of an intervening death. Under a special text Nārada says 'learned brāhmanas, hermits, aged persons as also ascetics and others are incompetent as witnesses under a special text of law and no reason is given for this rule'.

स्त्रीबालवृद्धकितवमत्तोन्मत्ताभिशस्तकाः ।
रङ्गावतारिपाषण्डिकूटकृद्विकलेन्द्रियाः ।। ७०
पतितासार्थसंबन्धिसहायरिपुतस्कराः ।
साहसी दृष्टदोषश्च निर्धूताद्यास्त्वसाक्षिणः ।। ७१

[स्त्री-बाल-वृद्ध-कितव-उन्मत्त-अभिशस्तकाः । रङ्गावतारि-पाषण्डि-कूटकृत्-विकलेन्द्रियाः ।।

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पतित-आप्त-अर्थसंबन्धि-सहाय-रिपु-तस्कराः। साहसी,-दृष्टदोषः, च, निर्धूताद्याः, तु, असाक्षिणः।।]

A Woman, a minor, an old man, a rogue, an intoxicated person, one infatuated, one against whom an accusation has been brought, a stage dancer, a heretic, a forger, one deformed, one degraded, a relative, one having an interest in the subject matter of the suit, an ally, an enemy, a thief, a desperado, one, who has been found guilty; an outcaste and others are incompetent witnesses.

उभयानुमतः साक्षी भवेत्येकोऽपि धर्मवित्।
सर्वः साक्षी संग्रहणे चौर्यपारुष्यसाहसे।।७२

[उभयानुमतः, साक्षी, भवेत्, एकः, अपि, धर्मवित् सर्वः, साक्षी, संग्रहणे, चौर्य-पारुष्य-साहसे।।]

With the consent of both parties, even one person becomes (a sufficient) witness, if he is conversant with his duties. In the case of adultery, theft, insult and a sāhas (a heinous offence) any person may be a witness.

[The condition regarding the observance of religious duties holds good even in the case of more than three persons, still these are admissible as competent witnesses even in the absence of a consent from both sides. Only a single witness or two are accepted as sufficient only with the consent of both parties. Thus the expression tryavara (not less than three) has a meaning.]

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साक्षिणः श्रावयेद्वादिप्रतिवादिसमीपगान् ।
ये पातककृतां लोकाः महापातकिनां तथा । ।७३
अग्निदानां च ये लोका ये च स्त्रीबालघातिनाम् ।
स तान् सर्वानवाप्नोति यः साक्ष्यमनृतं वदेत् । ।७४

साक्षिणः, श्रावयेत्, वादि-प्रतिवादि-समीपगान् ये, पातककृताम्, लोकाः, महापातकिनाम्, तथा । ।

अग्निदानाम्, च, ये, लोकाः, ये, च, स्त्री-बाल-घातिनाम् स, तान्, सर्वान्, अवाप्नोति, यः, साक्ष्यम्, अनृतम्, वदेत् । ।

In the presence of the plaintiff and the defendant the witnesses should be affirmed (in the following form).

'Those regions (which are) meant for the perpetrators of sins and of baser sins, as also those worlds (which are) meant for the incendiaries and the slayers of women and children, to all these shall he go who gives false evidence.

सुकृतं यत्त्वया किंचिज्जन्मान्तरशतैः कृतम् ।
तत्सर्वं तस्य जानीहि यं पराजयसे मृषा । ।७५

[सुकृतम्, यत्, त्वया, किंचित् जन्मान्तरशतैः, कृतम् तत्, सर्वम्, तस्य, जानीहि, यम्, पराजयते, मृषा । ।]

'What ever merit you have secured by (your good deeds in) hundreds of previous lives, know that all that merit) will be his whose defeat you will bring about (by speaking) falsely.

[The transference to another of the merit acquired through innumerable births, as also the accrual of the results of baser and other sins is not deducible from

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untruth alone. This is intended merely as a means of inspiring awe and fear in the defendant.]

अब्रुवन् हि नरः साक्ष्यमृणं सदशबन्धकम् ।
राज्ञा सर्वं प्रदाप्यः स्यात् षट्चत्वारिंशकेऽहनि । ।७६

[अब्रुवन्, हि, नरः, साक्ष्यम्, ऋणम्, सदशबन्धकम् राज्ञा, सर्वम्, प्रदाप्यः, स्यात्, षट्चत्वरिंशके, अहनि । ।]

A person, not giving evidence, should be made to pay, by the king, entire debt with the addition of a tenth thereto on the forty-sixth day.

[The witness, who having agreed to give evidence as a witness, and does not speak anything, is to be given forty five days time to give evidence. If the witness fails to give evidence within the time he should be made by the King to pay the entire debt together with interest to the creditor and a tenth part of it to the King as fine.]

न ददाति हि यः साक्ष्यं जानन्नपि नराधमः ।
स कूटसाक्षिणां पापैस्तुल्यो दण्डेन चैव हि । ।७७

[न, ददाति, हि, यः, साक्ष्यम्, जानन्, अपि, नराधमः सः, कूटसाक्षिणाम्, पापैः, तुल्यः, दण्डेन, च, एव, हि । .

The worst of human beings, who though knowing (the facts of the case) does not offer (to give) evidence as a witness is equal to a false witness in point of sins and (liability to) punishment.

[The punishment for false witness will be mentioned

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hereafter. After punishing the false witnesses the suit should be commenced again. And even a suit is decided, it should be cancelled if the evidence comes to be known to be false.

Kūṭasāksiḥ : a false witness.]

द्वैधे बहूनां वचनं समेषु गुणिनां तथा।
गुणिद्वैधे तु वचनं ग्राह्यं ये गुणवत्तमाः।।७८

[द्वैधे, बहूनाम्, वचनम्, समेषु, गुणिनाम्, तथा गुणिद्वैधे, तु, वचनम्, ग्राह्यम्, ये, गुणवत्तमाः।।]

In (the case of) a disagreement, the testimony of the majority prevails; and if the witnesses are equally divided the evidence of the virtuous; and if the virtuous disagree, the evidence of those who are most virtuous should be accepted (as conclusive).

यस्योचुः साक्षिणः सत्यां प्रतिज्ञां स जयी भवेत्।
अन्यथा वादिनो यस्य ध्रुवस्तस्य पराजयः।।७९

[यस्य, ऊचुः, साक्षिणः, सत्याम्, प्रतिज्ञाम्, स, जयी, भवेत् अन्यथा, वादिनः, यस्य, ध्रुवः, तस्य, पराजयः।।]

He, whose witnesses depose to the truth of (the allegations in) the plaint, shall become successful. And sure defeat will be his whose witnesses contradict the plaint.

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उक्तेऽपि साक्षिभिः साक्ष्ये यद्यन्ये गुणवत्तमाः।

द्विगुणा वाऽन्यथा ब्रूयुः कूटाः स्युः पूर्वसाक्षिणः।।८०

[उक्ते, अपि, साक्षिभिः, साक्ष्ये, यदि, अन्ये, गुणवत्तमाः द्विगुणा, वा, अन्यथा, ब्रूयुः, कूटाः, स्युः, पूर्वसाक्षिणः।।]

Even after evidence has been given by witnesses in the matter under consideration, if more qualified witnesses, or double (than those first examined) depose otherwise, the first witnesses become false.

पृथक् पृथक् दण्डनीयाः कूटकृत् साक्षिणस्तथा।

विवादाद्द्विगुणं दण्डं विवास्यो ब्राह्मणः स्मृतः।। ८१

[पृथक्, पृथक्, दण्डनीयाः, कूटकृत्, साक्षिणः, तथा विवादात्, द्विगुणम्, दण्डम्, विवास्यः, ब्राह्मणः, स्मृतः।।]

The Suborner as well as the (false) witnesses should be seperately punished with a fine double the amount in dispute. A brāhmaṇa, who offers a false witness, should be banished from the kingdom but not fined.

यः साक्ष्यं श्रावितोऽन्येभ्यो निह्नुते तत्तमोवृतः।

स दाप्योऽष्टगुणं दण्डं ब्राह्मणं तु विवासयेत्।।८२

[यः, साक्ष्यम्, श्रावितः, अन्येभ्यो, निह्नुते, तत्, तमोवृतः सः, दाप्यः, अष्टगुणम्, दण्डम्, ब्राह्मणम्, तु, विवासयेत्।।]

He, who having been called upon and sworn to give evidence conceals it from others under the influence of passion, should be made to pay an eight-fold fine. A brāhmaṇa, however, should be banished.

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वर्णिनां हि वधो यत्र तत्र साक्ष्यनृतं वदेत्।
तत्पावनाय निर्वाप्यश्चरुः सारस्वतो द्विजैः।।८३

[वर्णिनाम्, हि, वधः, यत्र, तत्र, सक्षि, अनुतं, वदेत् तत्पावनाय, निर्वाप्यः, चरुः, सारस्वतः, द्विजैः।।]

Where men of the four orders are (likely) to suffer capital punishment, there a witness may speak the untruth. For purification from that (sin), the special oblation of rice known as the sārasvata should be presented by the twice born.

[In the case of a complaint, by speaking the truth, if there is any likelihood of a capital punishment to men of the four orders (sūdra, vaisya, kṣatriya and brāhmaṇa) the witness should not speak the truth.]

3.3 Self Check Questions

1. के के साक्षिणः भवितुमर्हाः?
2. के के साक्षिणः भवितुमनर्हाः?
3. कूटसाक्षिणः के? विवृणुत।

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NOTES :

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Unit - IV
अथ लेख्यप्रकरणम् ||६||
Documents

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4.1. Introduction

4.2. पाठ्यभागः :

4.3 Self Check Questions

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Unit - IV

अथ लेख्यप्रकरणम् ||६||

Documents

4.1 Introduction

After explaining the possession and witnesses now it is the turn of the documents to be dealt with in the chapter. Here, a writing is of two sorts - a śāsana (royal grant) and a janadapa (executed between citizens). The janapada is again two kinds - one in his own hand writing and the other in another's hand. Of these, that in one's own handwriting may be without any attestation, while that in another's hand should bear attestation by witnesses. These two are accepted as proofs having regard to the usage of the land.

4.2. पाठ्यभागः :

समामासतदर्धाह[illegible]जातिस्वगोत्रकैः |
स[illegible]चारिका[illegible]पितृनामादिचिह्नितम् || ८५

[समा-मास-त[illegible]-ह[illegible]नाम-जाति-स्वगोत्रकैः [illegible]-[illegible]त्मीय-पितृनामादिचिह्नितम् [illegible]

It should contain, among other things, the [illegible] the month, [illegible], the day, the names, [illegible] and the names of their own gotra as also the scholastic [illegible] and the names of self and father.

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[By the use of term 'ādi', (among other things) the amount, the caste, the quantity of the amount, the day of the week. A writing containing these should be executed.]

समासेऽर्थे ऋणी नाम स्वहस्तेन निवेशयेत्।
मतं मेऽमुकपुत्रस्य यदत्रोपरि लेखितम्।।८६

[समासे, अर्थे, ऋणी, नाम, स्वहस्तेन, निवेशयेत मतम्, मे, अमुकपुत्रस्य, यत्, अत्र, उपरि, लेखितम्।।]

After the contract has been executed completely the debtor should enter his name with his own hand (at the end) with the words - "What is written above has the assent of, me the son of such (and such) a one."

साक्षिणश्च स्वहस्तेन पितृनामकपूर्वकम्।
अत्राहममुकः साक्षी लिखेयुरिति ते समाः।।८७

[साक्षिणः, च, स्वहस्तेन, पितृनामकपूर्वकम् अत्र, अहम्, अमुकः, साक्षी, लिखेयुः, इति, ते, समाः।।]

The witnesses also, should, with their father's names before theirs, subscribe in their own hand, thus : "Here, so and so, am a witness". These witnesses should be equal.

[All those persons who have been indicated as witnesses in the document should seperately write down their names preceeded by those of their fathers with the words - "I Devadatta, am a witness to this transaction." These witnesses, moreover, should be so selected as to be equal in number and quality also. If a debtor or a witness is not literate, then the debtor through another person and

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the witness through another witness should cause the declaration to be written down.]

उभयाभ्यर्थितेनैतन्मया ह्यमुकसूनुना।
लिखितं ह्यमुकेनेति लेखकोऽन्ते ततो लिखेत्।।८८

[उभयाभ्यर्थितेन, एतत्, मया, हि, अमुकसूनुना लिखतम्, हि, अमुकेन, इति, लेखकः, अन्ते, ततो, लिखेत्।।]

Then at the end (of the document) the writer should subscribe thus, "Being desired by both the parties this was written by me so and so, the son of so and so."

विनापि साक्षिभिर्लेख्यं स्वहस्तलिखितं तु यत्।
तत्प्रमाणं स्मृतं लेख्यं बलोपधिकृतादृते।।८९

[विना, अपि, साक्षिभिः, लेख्यम्, स्वहस्तलिखितम्, तु, यत् तत्, प्रमाणम्, स्मृतम्, लेख्यम्, बलोपधिकृतात्, ऋते।।]

A writing, which is in one's own hand, although it be without witnesses, is declared to be evidence, except when it is caused by force or fraud.

ऋणं लेख्यकृतं देयं पुरुषैस्त्रिभिरेव तु।
आधिस्तु भुज्यते तावद्यावत्तन्न प्रतिदीयते।।९०

[ऋणम्, लेख्यकृतम्, देयम्, पुरुषैः, त्रिभिः, एव, तु आधिस्तु, भुज्यते, तावत्, यावत्, तत्, न, प्रतिदीयते।।]

A debt evidenced by writing should be paid by (persons in) three generations only. A pledge, however, is enjoyed as long as it is not paid off.

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[A debt evidenced by a document should be paid by the borrower, his son and the sons of that son, but not by the fourth and others. Whereas a pledge may be enjoyed even as long as the debt is not paid off whether by the fourth or the fifth.]

देशान्तरस्थे दुर्लेख्ये नष्टोन्मृष्टे हृते तथा।
भिन्ने दग्धेऽथवा छिन्ने लेख्यमन्यत्तु कारयेत्।।९१

[देशान्तरस्थे, दुर्लेख्ये, नष्टोन्मृष्टे, हृते, तथा भिन्ने, दग्धे, अथवा, छिन्ने, लेख्यम्, अन्यत्, तु, कारयेत्।।]

If a document is in another country, is badly written, or is lost, or effaced, as also, if it is stolen, if it is torn, burnt, or cut asunder, another should be allowed (by the King) to be made (in its place).

[When a document has become unfit for a suit another should be made. The unfitness characteristics are enlisted above.]

सन्दिग्धलेख्यशुद्धिः स्यात्स्वहस्तलिखितादिभिः।
युक्तिप्राप्तिक्रियाचिह्नसंबन्धागमहेतुभिः।।९२

[सन्दिग्धलेख्यशुद्धिः, स्यात्, स्वहस्तलिखितादिभिः युक्ति-प्राप्ति-क्रिया-चिह्न-संबन्धा-गमहेतुभिः।।]

The genuineness of a doubtful and disputed document may be established by (comparison with other) documents and (othe writings) of the party (written) in his own hand, and by similar other means; as also by presumption, by confrontation of parties, by direct proof, by marks, by previous

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connections, by (a probability of) title and by inference.

[By means of these circumstances the genuineness of a disputed writing may be established].

लेख्यस्य पृष्ठेऽभिलिखेद्दत्त्वा दत्त्वर्णिको धनम् ।
धनी वोपगतं दद्यात्स्वहस्तपरिचिह्नितम् ।।९३

[लेख्यस्य, पृष्ठे, अभिलिखेत्, दत्त्वा, दत्त्वर्णिकः, धनम् धनी, वा, उपगतम्, दद्यात्, स्वहस्तपरिचिह्नितम् ।।]

The debtor should write on the back of the bond each payment made by him after making such payment; or the creditor should endorse the amount recieved by him marked in his own hand.

दत्त्वर्णं पाटयेल्लेख्यं शुद्ध्यै वान्यत्तु कारयेत् ।
साक्षिमच्च भवेद्यद्वा तद्दातव्यं ससाक्षिकम् ।।९४

[दत्त्वा, ऋणम्, पाटयेत्, लेख्यम्, शुद्ध्यै, वा, अन्यत्, तु, कारयेत् साक्षिमत्, च, भवेत्, यत्, वा, तत्, दातव्यम्, ससाक्षिकम ।।]

After paying the debt, the document should be caused to be made torn or another should be caused to be made for (evidencing) the acquittance. And a debt which was incurred before witnesses should be paid in the presence of witnesses.

4.3 Self Check Questions

1. लेख्यप्रकरणं संगृह्णित ।
2. लेख्यं कथं करणीयम्? विवृणुत ।
3. कथं लेख्यस्य शुद्धत्वं ज्ञातव्यम्?

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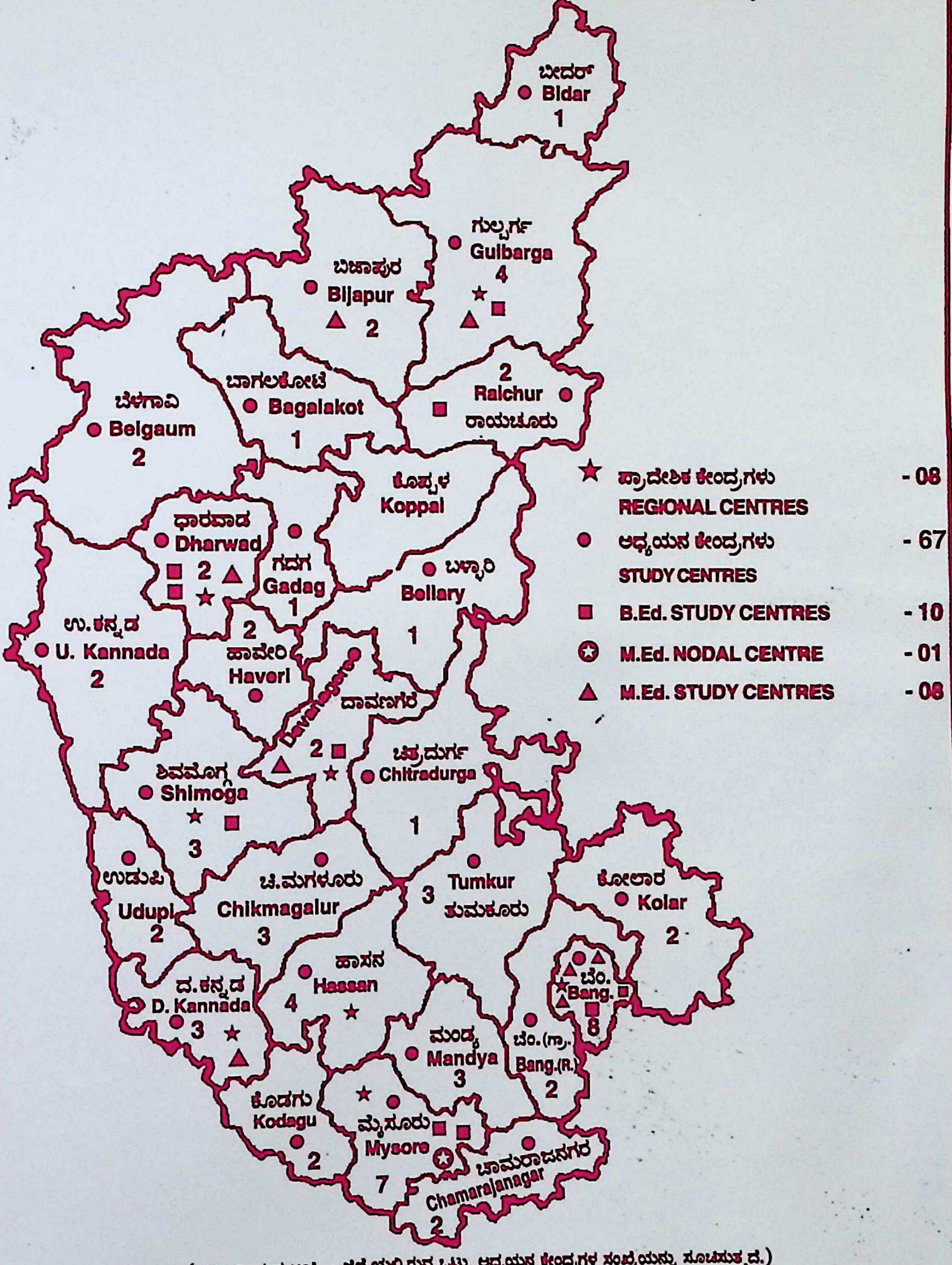

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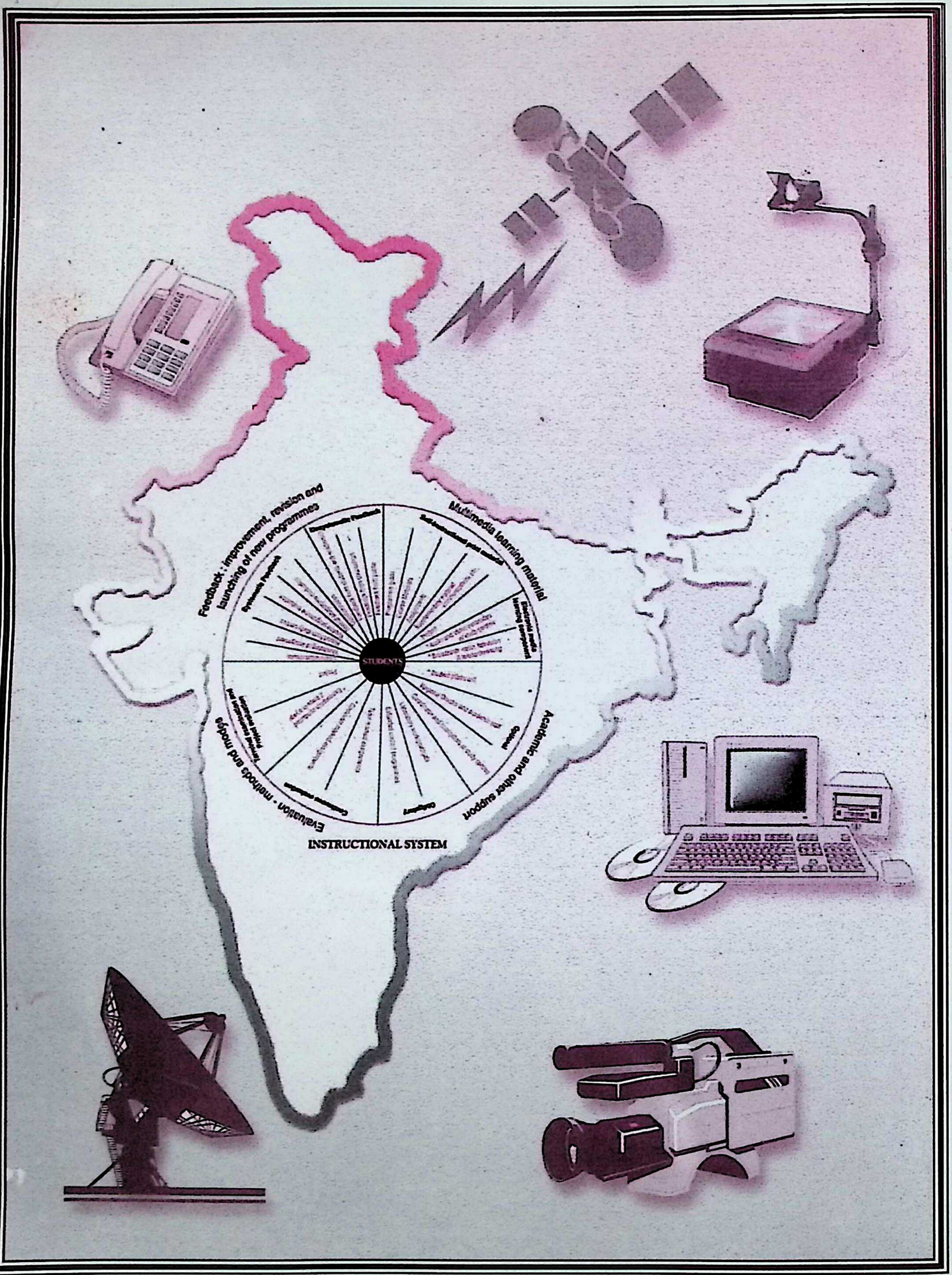

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